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MARC SPITZER
COMMISSIONEROPEN MEETING ITEM
RECEIVEDBRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

2002 JUN 12 P 3:27

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: JUNE 12, 2002

DOCKET NO: T-03630A-01-0854

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip Dion. The recommendation has been filed in the form of an Order on:

BIG PLANET, INC.
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 12:00 p.m. on or before:

JUNE 21, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 25, 2002 and JUNE 26, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

JUN 12 2002

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[Signature]
BRIAN C. McNEIL
EXECUTIVE SECRETARY

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 WILLIAM A. MUNDELL
4 CHAIRMAN
5 JIM IRVIN
6 COMMISSIONER
7 MARC SPITZER
8 COMMISSIONER

9 IN THE MATTER OF THE APPLICATION OF
10 BIG PLANET, INC. FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 COMPETITIVE RESOLD INTEREXCHANGE
13 TELECOMMUNICATIONS SERVICES, EXCEPT
14 LOCAL EXCHANGE SERVICES.

DOCKET NO. T-03630A-01-0854

DECISION NO. _____

ORDER

15 Open Meeting
16 June 25 and 26, 2002
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On October 29, 2001, Big Planet, Inc. ("Applicant" or "Big Planet") filed with the
23 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
24 competitive resold interexchange telecommunications services, except local exchange services,
25 within the State of Arizona.

26 2. Applicant is a switchless reseller that purchases telecommunications services from a
27 variety of carriers for resale to its customers.

28 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. Big Planet has authority to transact business in the State of Arizona.

5. On December 17, 2001, Big Planet filed an Affidavit of Publication indicating
compliance with the Commission's notice requirements.

6. On March 6, 2002, the Commission's Utilities Division Staff ("Staff") filed a Staff

1 Report in this matter recommending approval of the application subject to certain conditions, and
2 making other recommendations.

3 7. In its Staff Report, Staff stated that based on information obtained from the Applicant,
4 it has determined that Big Planet's fair value rate base is zero, and is too small to be useful in setting
5 rates. Staff further stated that in general, rates for competitive services are not set according to rate of
6 return regulation, but are heavily influenced by the market. Staff recommended that the Commission
7 not set rates for Big Planet based on the fair value of its rate base.

8 8. Staff believes that Big Planet has no market power and that the reasonableness of its
9 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
10 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
11 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
12 Commission approve them.

13 9. Staff recommended approval of Big Planet's application subject to the following:

14 (a) The Applicant should be ordered to comply with all Commission rules, orders,
15 and other requirements relevant to the provision of intrastate telecommunications
16 service;

17 (b) The Applicant should be ordered to maintain its accounts and records as
18 required by the Commission;

19 (c) The Applicant should be ordered to file with the Commission all financial and
20 other reports that the Commission may require, and in a form and at such times as the
21 Commission may designate;

22 (d) The Applicant should be ordered to maintain on file with the Commission all
23 current tariffs and rates, and any service standards that the Commission may require;

24 (e) The Applicant should be ordered to comply with the Commission's rules and
25 modify its tariffs to conform to these rules if it is determined that there is a conflict
26 between the Applicant's tariffs and the Commission's rules;

27 (f) The Applicant should be ordered to cooperate with Commission investigations
28 of customer complaints;

(g) The Applicant should be ordered to participate in and contribute to a universal
service fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon

changes to the Applicant's address or telephone number;

(i) The Applicant's interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(j) The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and

(k) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate.

10. Staff further recommended that Big Planet's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

11. Big Planet's proposed tariff indicates that it intends to collect prepayments from its customers. Additionally, Big Planet did not provide its financial statements for the past two years; rather, Big Planet provided the financial statements of its parent company, Nu Skin Enterprises, Inc.

12. Based on Big Planet's indication it will collect prepayments, Staff also recommended that:

(a) Big Planet's Certificate should be conditioned upon the Applicant procuring a performance bond as described below, and filing proof of that performance bond within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first,

(b) Big Planet be required to procure a performance bond in the initial amount of \$10,000, with the minimum bond amount of \$10,000 to be increased if at any time it would be insufficient to cover all advances, deposits, or prepayments collected from its customers, in the following manner: The bond amount should be increased in increments of \$5,000, with such increases to occur whenever the total amount of the advances, deposits, and prepayments reaches a level within \$1,000 under the actual bond amount, and

(c) If at some time in the future, Big Planet does not collect from its customers any advances, prepayments or deposits, that Big Planet should be allowed to file with the Commission a request for cancellation of its established performance bond. Staff stated that after Staff review of such filing, Staff would forward its recommendation on the matter to the Commission for a Decision.

13. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact. Nos. 10 and 12 above, that Big Planet's Certificate should become null and void

1 without further Order of the Commission, and that no time extensions for compliance should be
2 granted.

3 14. The rates proposed by this filing are for competitive services.

4 15. Staff's recommendations as set forth herein are reasonable.

5 16. Big Planet's fair value rate base is zero.

6 **CONCLUSIONS OF LAW**

7 1. Applicant is a public service corporation within the meaning of Article XV of the
8 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

9 2. The Commission has jurisdiction over Applicant and the subject matter of the
10 application.

11 3. Notice of the application was given in accordance with the law.

12 4. Applicant's provision of resold interexchange telecommunications services is in the
13 public interest.

14 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for
15 providing competitive resold interexchange telecommunications services in Arizona.

16 6. Staff's recommendations in Findings of Fact No. 7, 8, 9, 10, 12 and 14 should be
17 adopted.

18 7. Big Planet's fair value rate base is not useful in determining just and reasonable rates
19 for the competitive services it proposes to provide to Arizona customers.

20 8. Big Planet's rates, as they appear in its proposed tariffs, are just and reasonable and
21 should be approved.

22 **ORDER**

23 IT IS THEREFORE ORDERED that the application of Big Planet, Inc. for a Certificate of
24 Convenience and Necessity for authority to provide competitive resold interexchange
25 telecommunications services, except local exchange services, is hereby granted, conditioned upon its
26 compliance with the conditions recommended by Staff as set forth in Findings of Fact 9, 10 and 12
27 above.

28 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact No.

1 7, 8, 9, 10 and 12 above are hereby adopted.

2 IT IS FURTHER ORDERED that Big Planet, Inc. shall comply with the adopted Staff
3 recommendations as set forth in Findings of Fact 9, 10 and 12 above.

4 IT IS FURTHER ORDERED that if Big Planet, Inc. fails to meet the timeframes outlined in
5 Findings of Fact. Nos. 10 and 12 above, that the Certificate conditionally granted herein shall become
6 null and void without further Order of the Commission.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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11 CHAIRMAN

COMMISSIONER

COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2002.

17 BRIAN C. McNEIL
EXECUTIVE SECRETARY

18 DISSENT _____
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1 SERVICE LIST FOR: BIG PLANET, INC.

2 DOCKET NO.: T-3630A-01-0854

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